THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DISCOVERY PARK COMMUNITY ALLIANCE, a community non-profit corporation, and ELIZABETH CAMPBELL, Petitioners, v. CITY OF SEATTLE, Respondent.	CASE NO. C19-1105-JCC ORDER

This matter comes before the Court on Respondent's motion for joinder (Dkt. No. 16). Having considered the parties' briefing and the relevant record, the Court GRANTS the motion for the reasons explained herein.

I. BACKGROUND

Fort Lawton is a military base located in Seattle and owned by the United States Department of the Army. (Dkt. No. 1-2 at 3.) The Army is attempting to dispose of Fort Lawton, and the City of Seattle has a significant role to play in the fort's disposal because the City is the Local Redevelopment Authority ("LRA") for the fort. (*See id.* at 5–10); *see also* 24 C.F.R. Part 586. In its role as LRA, the City entered into an agreement with the Seattle Public Schools ("SPS"). (*See* Dkt. No. 17-1.) The agreement provides that the City will allow SPS to acquire up to six acres of land from the Army. (*Id.* at 4.) To effectuate the agreement, the Seattle City

Council passed CB 119535. (*See* Dkt. No. 1-2 at 3, 14–15, 37–41.)

On June 19, 2018, Petitioners filed a land use petition challenging three City Council decisions relating to Fort Lawton's disposal. (*Id.* at 3.) One of those decisions is CB 119535. (*Id.*) Yet, although CB 119535 approved an agreement between the City and SPS involving property owned by the Army, Petitioners did not include the Army or SPS as parties. (*Id.* at 2.) Instead, Petitioners named only the City as a respondent. (*Id.*) The City now moves for the Court to order Petitioners to join the Army and SPS as parties. (Dkt. No. 16.)

II. DISCUSSION

The City argues that the Army is a required party under Washington's Land Use Petition Act, Wash. Rev. Code Chapter 36.70C ("LUPA"), and under Federal Rule of Civil Procedure 19(a). (Dkt. No. 16 at 3–5.) The City further argues that while SPS is not a required party under LUPA, it is a required party under Rule 19(a) because SPS has an interest in the action and the Court could not afford complete relief if SPS is not included. (*Id.* at 4–5.)

Petitioners stipulate to the joinder of the Army. (Dkt. No. 20 at 1.) However, Petitioners object to the joinder of SPS, arguing that SPS is not a required party because Petitioners "[do] not wish to impact the Seattle Public Schools," the City did not join SPS in the related administrative matter, and SPS has not tried to intervene. (*See id.* at 4–5.)

A. Joinder of the Army

Petitioners do not object to the joinder of the Army, (*id.* at 1), and LUPA requires that the Army be joined because the Army owns Fort Lawton, *see* Wash. Rev. Code § 36.70C.040(2), .050. Furthermore, the Army is subject to service of process, and joinder of the Army would not deprive the Court of subject matter jurisdiction, which in this case is based on federal question and supplemental jurisdiction, (*see* Dkt. No. 1 at 2). Consequently, the Court ORDERS that Petitioners file and serve an amended petition naming the Army as a respondent to this action.

B. Joinder of SPS

Although Petitioners stipulate to the Army's joinder, Petitioners argue that SPS is not a

required party under Rule 19(a). (Dkt. No. 20 at 4–5.)

Under Rule 19(a), a party is required to be joined if they are subject to service of process, their joinder will not deprive the court of subject-matter jurisdiction, and one of the following factors are met:

> (A) in the person's absence, the court cannot accord complete relief among existing parties; or
>
> (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
>
> > (i) as a practical matter impair or impede the person's ability to protect the interest; or
> >
> > (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

"There is no precise formula for determining whether a particular nonparty should be joined under Rule 19(a). . . . The determination is heavily influenced by the facts and circumstances of each case." *N. Alaska Envtl. Ctr. v. Hodel*, 803 F.2d 466, 468 (9th Cir. 1986) (alterations in original) (quoting *Bakia v. County of Los Angeles*, 687 F.2d 299, 301 (9th Cir. 1982)). But while the determination is case-specific, the Ninth Circuit has articulated certain principles to help guide that determination. One of those principles is that "in an action to set aside a lease or contract, all parties who may be affected by the . . . action are indispensable." *Lomayaktewa v. Hathaway*, 520 F.2d 1324, 1325 (9th Cir. 1975).

Although this case involves a challenge to a city ordinance instead of a contract, the principle from *Lomayaktewa v. Hathaway*, 520 F.2d 1324 (9th Cir. 1975), still applies. The ordinance in question authorized the Director of the Office of Housing and Superintendent of Parks and Recreation to execute a memorandum of agreement between the City and SPS. (Dkt. No. 1-2 at 21–22.) That agreement, in turn, "commit[s] the

City/LRA to work with SPS in obtaining a public benefit conveyance of the FLARC property through the U.S. Department of Education." (*Id.* at 14; *see also* Dkt. No. 17-2 at 2–6.) This agreement bears many of the hallmarks of a contract, *see Becker v. Wash. State Univ.*, 266 P.3d 893, 889–900 (Wash. Ct. App. 2011), and it is this agreement that Petitioners seek to challenge, (*see* Dkt. No. 1-2 at 13–14). As a beneficiary of the Agreement, SPS is a required party because "disposing of the action in [SPS's] absence may[] as a practical matter impair or impede [SPS's] ability to protect [its] interest." Fed. R. Civ. P. 19(a); *Kescoli v. Babbitt*, 101 F.3d 1304, 1309–10 (9th Cir. 1996) (holding that the absent parties were required because the plaintiff's action would directly affect an agreement between the parties and was "not limited to merely requiring the [agency] to comply with procedural obligations in the future")

Petitioners cite several cases purportedly showing that SPS need not be joined, but none of those cases apply here. In *Salt Lake Tribune Publishing Co., LLC v. AT&T Corp.*, 320 F.3d 1081, 1097–98 (10th Cir. 2003), for example, the district court could fashion relief to avoid interfering with the absent party's interests under a stock option agreement. In this case, by contrast, the relief Petitioners seek—invalidation of CB 119535—would necessarily undo the agreement between the City and SPS. Likewise, *NAACP v. Donovan*, 558 F. Supp. 218, 223–24 (D.D.C. 1982), did not involve a challenge to a specific agreement between two parties; it instead involved a challenge to how the Department of Labor had interpreted its own regulations relating to labor certifications.

Petitioners also appear to argue that SPS is not a required party because "[t]he City took no action to join [SPS] in the administrative matter" and SPS "has taken no action to enter as a party into this matter." (*See* Dkt. No. 20 at 4.) However, Petitioners cite no authority for the idea that one party's failure to join an absent party during administrative proceedings somehow renders it unnecessary to join the absent party once

the case reaches a district court. Such a rule would contradict the plain text of Rule 19(a), which focuses on the absent party's interests in the proceedings, not on the behavior of persons already a party to the action. And while Petitioners cite *Hall v. National Service Industries, Inc.*, 172 F.R.D. 157, 159 (E.D. Pa. 1997), when they argue that "SPS has taken no action to enter as a party," *Hall* in no way suggests that an absent party loses the protections afforded to them by Rule 19(a) if the party fails to intervene.

Given that *Lomayaktewa* squarely applies and that Petitioners have failed to cite any applicable authority to the contrary, the Court concludes that SPS has an interest in the action requiring that it be joined if feasible. *See Kescoli*, 101 F.3d at 1309–10; *Lomayaktewa*, 520 F.2d at 1325. In addition, SPS is subject to service of process, and joinder of SPS would not deprive the Court of subject-matter jurisdiction. The Court therefore ORDERS that Petitioners file and serve an amended petition naming SPS as a respondent to this action.

III. CONCLUSION

For the foregoing reasons, Respondent's motion for joinder (Dkt. No. 16) is GRANTED. The Court ORDERS that Petitioners file and serve an amended petition naming the Army and SPS as respondents in this action.

DATED this 14th day of November 2019.

John C. Coughenour
UNITED STATES DISTRICT JUDGE